

CHAD EMORY JONES,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

V.

BACKGROUND

On June 27, 2013, petitioner filed a motion under § 2255 seeking relief under the Fair

Sentencing Act. [DE 139]. On October 17, 2013, the Court construed petitioner's motion as one brought pursuant to 18 U.S.C. § 3582. [DE 143]. On April 18, 2014, the Court denied petitioner's § 3582 motion. [DE 161]. On September 24, 2014, petitioner filed a motion under § 2255. [DE 169]. On December 23, 2014, the Court dismissed petitioner's motion. [DE 176].

On September 2, 2016, petitioner filed the instant motion under § 2255. [DE 216]. Petitioner argues that counsel was ineffective in his representation of petitioner during a proceeding under 18 U.S.C. § 3582(c). [DE 216 at 4]. On October 24, 2016, the government moved to dismiss petitioner's motion for lack of jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure. [DE 219].

DISCUSSION

The Antiterrorism and Effective Death Penalty Act of 1996 provides that a second or successive habeas petition must be certified by a panel of the appropriate court of appeals to contain either "newly discovered evidence that, if proven and viewed in light of the evidence as a whole would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense" or "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." 28 U.S.C. § 2255(h)(1)-(2). Absent pre-filing authorization, a district court lacks jurisdiction to consider a second or successive petition. *United States v. Winestock*, 340 F.3d 200, 205 (4th Cir. 2003).

Because the instant motion attacks the same conviction and sentence as was earlier challenged by the prior motion to vacate, and that motion was dismissed on the merits, the instant motion to vacate is second or successive and the Court is without jurisdiction to consider

it in the absence of pre-filing authorization. *Winestock*, 340 F.3d. at 207. There being no authorization, the motion is properly dismissed.

Certificate of Appealability

Rule 11 of the Rules Governing Section 2255 Cases provides that “the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.”

A certificate of appealability shall not issue absent “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A petitioner satisfies this standard by demonstrating that reasonable jurists would find that an assessment of the constitutional claims is debatable and any dispositive procedural ruling dismissing such claims is also debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). As reasonable jurists would not find this Court’s dismissal of petitioner’s § 2255 motion debatable, a certificate of appealability is DENIED.

CONCLUSION

Accordingly, for the foregoing reasons, respondent’s motion to dismiss [DE 219] is GRANTED and petitioner’s motion to vacate pursuant to 28 U.S.C. § 2255 [DE 216] is DISMISSED. A certificate of appealability is DENIED.

SO ORDERED, this 21 day of April, 2017.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE